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ABSTRACT

The Federal Trade Commission (FTC) is a valuable source of information if one knows how and where to look. Besides being able to review FTC court litigation, journalists, consumer activists, and the general public have access to specific reports that provide information about mergers and consolidations, corporate organization patterns, quarterly financial statistics, and comprehensive financial data listed by uniform industry categories (line of business reports). If the information seekers are resourceful enough, they may be able to develop contacts within individual FTC divisions and acquire confidential data without a Freedom of Information Act request. (RL)

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FREEDOM OF INFORMATION CENTER REPORT NO. 409

THE FTC: A FOUNT OF BUSINESS DATA

This report was written by Tim Bryant, who recently received his M.A. degree from the University of Missouri School of Journalism. It is the fourth in a series of reports on access to information from federal agencies, prepared by graduate students in the Washington, D.C., reporting program.

During a two-week period in April 1979, the Federal Trade Commission, among other things, reached agreement with an advertising agency to substantiate claims about a dishwasher's performance, settled a dispute between suppliers and producers of industrial gases, increased warranty protection for owners of mobile homes, issued its first Line of Business Report after a four-year legal battle, and participated in nine hearings before administrative law judges.

It was a slow period.

In 1978, the FTC launched or settled more than 100 investigations into unfair business practices.[1] In addition, it won more than $700,000 in civil penalties from 13 companies found guilty of misleading the public.[2] By its own estimation, the FTC over an entire year operates at more than twice the rate of the April 1979 period.

At whatever speed the FTC runs, it compiles enormous amounts of information about American companies — both large and small. And virtually all decisions made by the FTC have importance at the local level.

Much publicity surrounds the FTC's glamorous issues, such as the proposed ban on television advertising for children. But the FTC also has a wealth of less glamorous information about U.S. business — information on business activity, organization and income. Requests for such information, found on standard yet little-used FTC forms, can contribute to a broad understanding of American business.

Structure and Authority

Of all the federal agencies, the FTC has the broadest authority over domestic business practices. The Federal Trade Commission Act of the United States Code (15 U.S.C. 46) requires that the commission protect the public from anti-competitive behavior and unfair or deceptive business practices. Passed in 1914, the act states: "Unfair methods of competition in commerce are hereby declared unlawful."

In passing the act, Congress left it up to the FTC to determine what constitutes unfair methods of competition in commerce. The commission has authority to investigate and correct practices that deceive or injure consumers, harm interstate commerce or endanger a significant public interest. The FTC also administers numerous federal laws designed to protect consumers from deceptive product packaging and labeling, unscrupulous lenders, inaccurate credit reports, insufficient product warranties, discriminatory leasing of personal property and other unsavory practices.

Enforcement Procedures

The commission has adopted four alternative methods to deal with unfair or illegal business practices: advisory opinions, industry guides, judicial proceedings and trade regulation rules. These are the main FTC tools used to force compliance with federal laws.

Advisory opinions are issued at the request of a person or corporation wanting to know if a proposed course of conduct meets FTC approval. They help requestors — and the public — by dissuading businesses from undertaking illegal activities. One advisory opinion, for example, prompted a publisher not to offer a series of books on underwater exploration before the company decided to publish it. The FTC said order forms and advertisements for a projected series must clearly disclose that the books do not yet exist, to avoid being unfair or deceptive.[3]

Industry guides are interpretations of FTC-administered laws. While compliance is voluntary, failure to comply may result in corrective action by the commission. An example of an industry guide is the automobile fuel-economy guide that the commission issued instead of a broader, more time-consuming trade regulation rule requiring automakers to disclose Environmental Protection Agency mileage ratings in advertisements mentioning fuel efficiency.

A third alternative is the judicial proceeding in which parties have the same rights accorded in a normal court proceeding. An administrative law judge, named by the FTC, presides. The judge issues initial findings of fact, subject to commission review. Adjudicative cases may be resolved in one of three ways. The first is by consent agreement, in which the accused party neither admits nor denies guilt but agrees to halt the objectionable practice "and to take any affirmative actions the commission requires."[4] Second, a case may be dismissed. Third, the party may be found guilty of the violation, in which case the commission issues a cease-and-desist order and levies a civil penalty.

Summary: The Federal Trade Commission polices a broad range of business practices, from deceptive advertising to inaccurate credit reports. This report outlines the FTC's multifaceted authority and examines the wide variety of information available through the commission.

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Trade regulation rules define unfair or deceptive business practices, setting standards with which companies must comply. The rules have the force of law, and they may be applied industrywide or limited to particular regions. Trade regulation rules allow the commission to deal with a broad consumer problem in a single action, rather than bringing cases against individual offenders. For example, the commission currently is considering a trade regulation rule requiring all makers of over-the-counter antacids to include warning information now listed on the product label in their advertisements as well.

It is clear, then, that FTC law-enforcement work falls into two main categories: mandatory orders and cooperative agreements.

Record-Keeping

The commission's Public Reference Branch houses the records of this law enforcement activity. Unless a requestor can specifically identify records — by case name or document number, for example — the public reference staff may be unable to locate the proper records. Often, however, citing the names of companies involved in a case will bring some response. All cases are given docket numbers from one of three categories: "D-number" dockets refer to cases under litigation; "C-number" dockets identify consent matters; and "seven-digit number" dockets refer to non-public investigations.

Information considered non-public by the commission includes data from FTC personnel and medical files; trade secrets submitted by businesses (such as customer names); deliberative portions of correspondence; and records relating to pending investigations that would interfere with the investigation if disclosed.

The Public Reference Branch maintains a variety of records: bound volumes of all FTC decisions; motions to limit or quash investigational subpoenas; petitions requesting action by the commission; records of contacts between commission members and persons involved in actions before the FTC (called the sunshine calendar); advertising substantiation material; compliance reports filed by companies under FTC order to stop or change certain practices, to divest themselves of certain holdings or to carry out remedial actions; and all public comments on cases pending before the commission.

The address of the Public Reference Branch is Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue N.W., Washington, D.C. 20580.

General Sources of Information

Within this framework of enforcement and record-keeping, the FTC has a characteristic in common with other large organizations — it produces voluminous amounts of information about what it is doing. Because it is a public regulatory agency dealing with broad social issues, the FTC is a valuable source of information. Much of the information the commission requires from business is public, but it is difficult to find unless one knows where to look.

Standard forms are used for most FTC activities except for its advertising substantiation program. Because each case is different in that program, devising a standard form is impossible. Fortunately, the FTC has compiled lists, by industry, of all manufacturers challenged for their advertising claims. Each industry is indexed by individual company. Products covered by the commission's advertising substantiation program include acne preparations, air conditioners, antiperspirants, automobile tires, automobiles, cold remedies, cough medicines, color televisions, dental products, dentifrices, dishwashers, dishwashing detergents, electric shavers, hair shampoos, hearing aids, pet foods, lawn mowers, soaps and detergents.

Industry indexes and reports for individual companies are available, for a fee, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22161. Additional requests may be sent to the Bureau of Consumer Protection, Federal Trade Commission, Sixth Street and Pennsylvania Avenue N.W., Washington, D.C. 20580. Reports for specific companies may be requested by name; no number is necessary.

The Bureau of Consumer Protection routinely issues information about all matters before it, in the quarterly BCP Matters sheet — a comprehensive, alphabetical listing of all companies and individuals dealing with the bureau. The sheet includes brief information about the nature of the dealings, the names of the FTC attorneys in charge and their telephone numbers. For a synopsis of individual cases and the name of a specific FTC employee to contact, the BCP Matters sheet is a good place to begin an investigation.

In recent years, the bureau has become more aggressive in challenging powerful businesses and industries that violate consumer protection laws. The matters sheet lists many well-known companies affecting large numbers of consumers. One or more of those companies may be headquartered in your city, or may have a subsidiary there that is a major employer.

Information on Mergers and Consolidations

The Justice Department and the five-member FTC have joint jurisdiction over U.S. antitrust laws, such as the Clayton and Sherman acts. The FTC's Bureau of Competition investigates and prosecutes unfair business methods which would reduce competition. Consequently, the FTC gathers detailed financial information from companies suspected of wrongdoing. Such reports are used by the FTC during its examination of proposed corporate mergers and consolidations. The FTC has authority to block mergers it believes to be in violation of antitrust laws.

While most proposed mergers and stock sales by large companies are publicly announced, transactions by smaller businesses often occur unnoticed. Use of the FTC information could lead to an investigation of whether the takeover of a small company by a large company would increase the chance that the small company would later be shut down.

At least 60 days prior to a planned merger or acquisition, the companies involved must file FTC forms 1859-A and 1859-B with the commission's Bureau of Competition. All privately and publicly held companies with assets over $10 million are required to file. Together, the forms show the names and addresses of the companies, the date when the planned merger or acquisition becomes effective and the amount to be paid — either cash, stock or some other consideration. For acquisitions, the companies must note the percentage of the selling company's total assets owned by the acquiring company both before and after the planned transfer. The forms also show total sales of the acquiring company for the most recent calendar year.

If the proposed sale or merger involves supermarkets or food departments in non-food stores, forms 1859-A and 1859-B require much more detailed information. This extra information is required because of the high concentration of

ownership in the retail food business.

For food store acquisitions, the acquiring company must show a county-by-county breakdown of stores currently owned, the number of stores owned for the last five years, and the total sales for all food stores. The acquiring company must also list the sales figures for its food departments in non-food stores, all other retail stores and wholesale grocery establishments. These figures also must be broken down county-by-county. For wholesale grocery establishments, the forms require some market information.

Similar information is required of stores to be acquired.

Another section of these pre-merger forms contains information about the acquiring company's organization. Many items are included, such as state and date of incorporation, whether the company is a subsidiary or has subsidiaries, and if so, a list of them.

After filing of the pre-merger notification report, an additional Acquiring Company Special Report Form must be submitted within 10 days after an acquisition agreement is reached. It contains some of the information found in the pre-merger report, but reveals more of the acquiring company's organization. The special report identifies the parent company if the acquisition is being made by a subsidiary. For example, if Acme plans to acquire 25 percent of XYZ Electronics, the special report will show that the National Auto Co. is the parent company of Acme.

In addition, the special report lists and describes all industries of the Standard Industrial Classification system in which the acquiring company operates one or more establishments. The listing of the SIC number is important because it gives the investigator a valuable cross reference to records filed by the acquiring company with other federal agencies, particularly the Securities and Exchange Commission and the Commerce Department. The revenue from each industrial classification for the base year of 1972 and the most recent five years are listed for each acquiring company. A separate section of the special report gives a brief history of the acquiring company's merger and acquisition activity since 1961.

To help keep track of acquisitions and mergers — there were 1,558 in 1977 alone[5] — the FTC maintains a Transaction Status Sheet, also known as Internal Form C8. Updated daily, the sheet lists the type of transaction, a brief description of it, the companies involved, the projected consummation date and whether the FTC has asked for more information. For completed transactions, the sheet also shows the final FTC decision. Identifying a form as "internal" does not necessarily mean that it is non-public. The term simply means that the form is used by just one FTC division.

An overall view of the FTC's activities in merger and acquisition approval is contained in the Bureau of Economics' Statistical Report on Mergers and Acquisitions, published annually. It is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Requests for information about ongoing merger investigations should be sent to the Public Reference Branch.

Only part of the FTC's business information is gathered on a case-by-case, company-by-company basis. The commission regularly conducts several studies to determine major characteristics of a broad cross section of American business. The primary studies are the Corporate Pattern Reports, the Quarterly Financial Reports and the Line of Business Reports.

Corporate Pattern Reports

Corporate Pattern Reports — produced annually — are valuable to investigators because they collect information on partnerships, associations and other relations between corporations. Discovering who is a friend of whom in the business world can be very important to an investigation.

Only two main forms are used for these reports, CPR-1 and CPR-2. CPR-1 contains the name and address of each corporation, whether it is a subsidiary, and a description of each incorporated or unincorporated company of which the reporting corporation owns more than 50 percent or has majority interest. The FTC has authority to require Corporate Pattern Reports from the nation's 1,000 largest companies.

Non-manufacturing subsidiaries or jointly owned companies, such as retail stores, are listed as a group, showing only the percentage of each owned by the reporting company. Each majority-owned manufacturer is listed by SIC product class with the value of shipments from domestic plants and the estimated rank in size compared to other U.S. manufacturers in the same product class. The value of this section of CPR-1 is that investigators can find the relative size ranking of manufacturers below those already widely reported in the business press. Corporate Pattern Reports, however, contain no information about interlocking directorates between various companies.

In addition to manufacturers owned by each reporting corporation, CPR-1 lists each company disposed of during the year. The name and address of the disposed company is given, as well as the date of disposal and the name and address of the acquiring or successor company. Reporting corporations also are required to divulge other ownership interests between five and 50 percent if the manufacturer has yearly sales in excess of $10 million.

Form CPR-2 concentrates on joint ventures, defined by the FTC as a corporation, partnership or other form of business organization owned in part or in full by two or more companies not under common ownership or control. Principal business activity, net sales and total assets are reported for each joint venture, as well as the amount of money invested in the venture during the year by the reporting corporation. CPR-2 also shows detailed ownership records by type of shareholder: manufacturing corporation, retailing corporation, broker, mutual fund, pension fund or trust department. Each shareholder owning 10 percent or more of the joint venture is listed. The form also shows the percentage of ownership each shareholder has, as well as the dollar amount of goods and services passing each year between the shareholder and the joint venture.

Information in CPR-2 can aid investigators in providing a dollars-and-cents explanation of the symbiotic relationship between large parent companies and small suppliers. For example, specific sales reports and extent-of-ownership records of a tool-box manufacturer and a giant retailer can be illuminating. Without difficulty, the CPR-2 material allows the investigator to show how the tool-box manufacturer may be a captive customer of the giant retailer, and how the giant needs its supplier to provide a necessary product.

CPR inquiries may be directed to the Assistant Director for Industry Analysis, Bureau of Economics, Federal Trade Commission, Sixth Street and Pennsylvania Avenue N.W., Washington, D.C. 20580.

Quarterly Financial Reports

Up-to-date aggregate statistics on the financial status and

position of U.S. corporations are contained in the commission's Quarterly Financial Report. This report provides other federal agencies, Congress and thousands of subscribers with timely information on the functioning of the economy.

FTC Form 59-101 contains the consolidated financial figures of all majority-owned domestic companies held by the corporation completing the form. The FTC selects for reporting a cross section of corporations engaged in broad categories of U.S. business, such as mining and manufacturing.

Every three months, reporting corporations provide estimated-income and profit figures plus a standard balance sheet. Although the commission compiles industry totals for public use, it pledges confidentiality of reports from individual companies. A Freedom of Information Act request will be necessary when seeking a report from a specific company.

Requests for Quarterly Financial Reports should be sent to the Division of Financial Statistics, Bureau of Economics. Freedom of Information Act requests should be sent to the Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue N.W., Washington, D.C. 20580. If the initial request is denied, which is probable, appeals should be sent to the Office of the General Counsel, at the same address.

Line of Business Reports

Other, and possibly more useful, data is found in the newly released Line of Business Reports. These reports are the first to contain publicly available, comprehensive financial data by uniform industry categories. Such data has generally not been available in the past, in part because the annual reports of diversified manufacturing corporations usually do not break down financial data by uniformly defined industry or product lines.

Industry categories in the report include drugs, motor vehicles and car bodies, several types of clothing and textile products, various furniture products, sporting and athletic goods, books, paper products, home appliances, various chemicals, industrial machinery, blast furnace and basic steel products, petroleum refining and a number of processed food products.

For each industry category, the reports give aggregate annual sales volume, costs of sales and operations, advertising expenses, research and development expenditures and physical-asset values.

The reports will be valuable in identifying areas of the economy where profits are especially high or low and in assessing the reasons for the differences, FTC officials say.[6] The data may also be used to examine the relationship between an industry's structure and its economic performance.

A four-year legal battle between business and the FTC preceded issuance of the first report, which covers only 1973. More than 100 companies had filed suit in an unsuccessful effort to block the project and curb the commission's information-gathering authority.

Special treatment in the Line of Business form (FTC Form 59-9-12) is given to certain vertically related operations. The term "vertically related" means that a company owns all components of production, from raw material to finished product. For example, a furniture company with a logging operation is vertically organized. Industries covered by such extra reporting requirements include tobacco, textiles, logging, inorganic pigments, oil and gas, cement, gypsum, coal, non-ferrous metal rolling, special design casting and autos.

The FTC has agreed to keep the reports of individual companies confidential. A Freedom of Information Act request will be necessary before any individual reports are released, and the chance of such a request being granted without appeal is remote. Inquiries should be sent to Manager, Line of Business Program, Division of Financial Statistics, Federal Trade Commission, Sixth Street and Pennsylvania Avenue N.W., Washington, D.C. 20580.

Other Useful Forms

FTC Forms 59-103 and 59-104 are nature of business forms containing much of the same financial information found in Line of Business and consolidation reports. However, Form 59-103 contains information about principal raw materials used in production of manufactured goods not found in other reports. Form 59-104 gives a synopsis of any changes in the reporting company's corporate structure during the last three years. Aggregate reports compiled from these forms are more timely than Line of Business Reports, but information from the forms can be obtained only through a Freedom of Information Act request. Inquiries should be sent to the FTC's Division of Financial Statistics.

With hundreds of FTC investigations under way at all times, many open and close with little fanfare. If a specific company is suspected of being the subject of a commission inquiry, requests for two forms may be helpful. FTC Form 44 is the Initial Phase Investigation Action Request. It identifies the companies targeted for investigation and offers brief comments on why the investigation is being requested. FTC Form 62, the Full Investigation Closing Form, is a request by a commission division to close an ongoing investigation with an explanation of why. Inquiries about Forms 62 and 44 should be sent to the specific FTC division having jurisdiction over the matter.

Tips and Shortcuts

To avoid jeopardizing ongoing investigations, commission officials will neither confirm nor deny that an investigation is under way. There is, however, a simple and effective way around this roadblock. Some records relating to FTC investigations, such as motions to quash subpoenas, are public. If a company suspected of being under investigation has filed such a motion, an investigator may assume that the commission is after that company, and is either investigating it or pointedly requesting information.

Completed investigations generally remain closed for three years, but often they are at least partially opened earlier. It is a mistake to allow the full time to pass before requesting information about the investigation. However, the older an investigation is, the more information will be released. Such data may have been confidential when filed, but after three years it may be released on the theory that disclosure will no longer harm the company.

A final tip — the Public Reference Branch is charged with prompt dissemination of all public information. But individual divisions compile the information before sending it to the public reading room. For whatever reason, the separate divisions may divulge confidential data without a Freedom of Information Act request. Using the commission's locator telephone number, rather than the reading room or Public Information Office, may put an investigator

in contact with an employee desiring to be helpful. The locator number is 202/523-3625.

One FTC press official said a great deal of information leaves the commission by such an informal route. As the official put it: "This place leaks like a sieve."

FOOTNOTES

1. Federal Trade Commission Annual Report 1978, pp. 1-12.
2. Ibid., pp. 13-14.

3. Elizabeth Williams, A Consumer's Guide to the Federal Trade Commission (Washington, D.C.: Paul Douglas Consumer Research Center, Inc.), p. 10.
4. Ibid., p. 11.
5. Statistical Report on Mergers and Acquisitions (Washington, D.C.: U.S. Government Printing Office, 1977), p. 10.
6. Official FTC statement, 9 April 1979.